IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

WP(C).No. 14450 of 2005(T)

AGAINST THE ORDER IN IA.8748/2004 IN OS.780/2002 of III ADDL.M.C.EKM (RENT CONTROL)

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PETITIONER:

VILASINI.S., K.P.NO.14/1007,
PLAVILA PUTHEN VEEDU, KAZHAKUTTOM P.O.,
THIRUVANANTHAPURAM.

BY ADV. SRI.BLAZE K.JOSE

RESPONDENTS:

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1. SATHYABHAMA, D/O.SANKARI,
PUTHENVEEDU, KULATHOOR P.O.,
NEAR MAHATHMA SOCIETY, ATTIPRA VILLAGE,
THIRUVANANTHAPURAM.

2. LATHAKUMARI OF DO. DO.

3. MADHUSOODANAN OF DO. DO.

BY ADV. SRI.RAM MOHAN.G.)
SRI.G.P.SHINOD)
SRI.MANU V.) for R2

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.14450/2005 T

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE I.A.NO.8748/2004 IN O.S.NO.780/2002 OF THE III ADDL. MUNSIFF'S COURT, THIRUVANANTHAPURAM.**

EXT.P2: **COPY OF THE ORDER IN I.A.NO.8748/2004 IN O.S.NO.780/2002 DTD. 4/01/2005 OF the III ADDL.MUNSIFF'S COURT, THIRUVA.**

/TRUE COPY/

KSS

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 14450 of 2005

Dated this the 10th day of July , 2007

JUDGMENT

Ext.P2 order, by which the learned Munsiff dismissed an application filed by the plaintiff in a suit for declaration and consequential prohibitory injunction to raise an additional issue as to whether the plaintiff is having tenancy rights, is under challenge in this writ petition filed under Article 227 of the Constitution. A copy of the plaint is placed before me for my perusal by Sri.Blaze K.Jose, the learned counsel for the petitioner. A reading of the same will show that the plaintiff claims decree as prayed for in the suit on the basis that he is having jenmom rights over the property. Of course in the last sentence in paragraph 19 of the plaint, he has contended, apart from what he has contended earlier, that he is entitled for getting his jenmom rights over the property declared under the provisions of the Kerala Land Reforms Act. The learned Munsiff

under the impugned order has observed that the pleadings raised by the plaintiff and the materials placed on record by him are insufficient to frame an issue as regards entitlement for fixity of tenure. The defendant contends that if the plaintiff believes that he is entitled to fixity of tenure under the Provisions of the Kerala Land Reforms Act, it is for him to move the Land Tribunal itself on his own. Sri. Rammohan, the learned counsel for the respondent would submit that such a specific issue was never raised by the respondent before the court below. What was contended in the written statement as well as in the counter affidavit filed in the matter of the instant application was that the plaintiff does not have a fixity of tenure or any other right by virtue of the provisions of the Kerala Land Reforms Act. Whatever that be, I do not find any infirmities about the impugned order by which the court below has decided that there is no justification for raising and formulating additional issues regarding fixity of tenure to the plaintiff in a suit filed by the plaintiff. I also agree with the learned Munsiff that there is no

warrant at all for making reference on the application filed by the plaintiff. The suit, I am told, is only for declaration and injunction. The suit will be decided by the learned Munsiff on the basis of the evidence adduced by the parties on the issues, which are already formulated for trial.

PIUS C. KURIAKOSE,
JUDGE.

dpk